



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
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DA 04-1587

Released: May 28, 2004

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF PECO TELCOVE TO TELCOVE, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-166

Comments Due: June 11, 2004

Reply Comments Due: June 18, 2004

On April 22, 2004, PECO TelCove, Adelphia Business Solutions, Inc. d/b/a TelCove, ("TelCove"), Adelphia Business Solutions of Pennsylvania, Inc. d/b/a TelCove ("TelCove-PA"), TelCove Holdings of Pennsylvania, Inc. ("TelCove Holdings"), PHT Holdings, LLC ("PHT"), PECO Energy Company ("PECO"), and Exelon Communications Company, LLC ("Exelon Communications") filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requesting approval to transfer control of PECO TelCove to TelCove. In addition, the applicants request approval to transfer control of certain fiber assets to from Exelon Communications to PECO TelCove.

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because (1) the proposed transaction would result in TelCove, TelCove-PA, TelCove Holdings, and PECO TelCove having a market share in the interstate, interexchange market of less than 10 percent; (2) the applicants would provide competitive telephone exchange services or exchange access service (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to

¹ 47 C.F.R §§ 63.03, 63.04; see 47 U.S.C. § 214. The applicants explain that since the filing of the original application, the names of the TelCove family of companies have changed. For ease of review we continue to refer to the companies by the names that were used in the original application. See Letter from Christine M. Gill et al., Counsel to PHT, PECO and Exelon Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-166 (filed May 18, 2004) (May 18 Letter).

the transaction; and (3) none of PECO TelCove, TelCove, TelCove-PA or TelCove Holdings is dominant with respect to any service.

PECO TelCove is a Pennsylvania general partnership. It is a competitive local exchange carrier providing local, long distance, point-to-point voice and data communications, Internet access, and enhanced data services for businesses and institutions in eastern Pennsylvania pursuant to blanket section 214 authority. Currently, the ownership of PECO TelCove is: 50% TelCove-PA, 49% PHT, and 1% PECO. PECO TelCove is currently managed by TelCove.

Upon consummation of the transaction, TelCove-PA will wholly own TelCove Holdings. TelCove-PA, in turn, is wholly owned by TelCove Operations, Inc., which is wholly owned by TelCove. TelCove, in turn, is 18% owned by Bay Harbour Partners, Ltd., a Cayman Islands investment firm. TelCove is also 16% owned by Bay Harbour 90-1, Ltd., a U.S. investment firm.² Bay Harbour Management, L.C. holds four of seven seats in the TelCove board of directors and thus, applicants state, could be deemed to exercise control over TelCove.³ Goldman Sachs, a U.S. investment firm, holds 15% of TelCove. TelCove has many carrier affiliates providing competitive telecommunications services in 35 markets in the eastern United States, along the Gulf Coast, and in several Midwestern states.

PHT is wholly-owned by Exelon Communications Holdings, which is wholly-owned by Exelon Enterprises Company, LLC (Exelon Enterprises). Exelon Enterprises and PECO are wholly-owned by Exelon Corporation. Exelon Communications Holdings owns 100% of Exelon Communications, which owns 100% of Exelon Communications Fiber Network. This fiber network is currently leased to PECO TelCove.

The proposed transfer of control will occur as a result of TelCove Holdings purchasing the remaining 50% interest in the partnership held by PECO and PHT. Following the transfer, TelCove Holdings and TelCove-PA will each hold a 50% percent interest in PECO TelCove, which will be renamed TelCove of Eastern Pennsylvania. In addition, the Exelon Communications Fiber Network leases will be terminated and the fiber assets will be transferred to PECO TelCove.

Applicants contend that consummation of the proposed transaction will allow PECO TelCove to enhance its competitive position by providing it with greater flexibility in obtaining financing which will yield benefits for PECO TelCove and allow it to continue operations in the long term. The Applicants state the proposed transaction will not result in any change in the existing rates for customers of PECO TelCove. Under its new name, TelCove of Eastern Pennsylvania, the partnership will continue to operate under its existing tariffs and rate structures

² See May 18 Letter.

³ See Letter from Brian FitzGerald et al., Counsel to PECO TelCove, TelCove, Telcove-PA, and TelCove Holdings, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 04-166 (filed May 27, 2004).

until the Commission approved changes to the same. There will be no change in day-to-day operations, as TelCove currently manages PECO TelCove.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before June 11, 2004** and **reply comments on or before June 18, 2004.**⁴ Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31st day after the date of this notice.⁵ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C.

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: www.bcpweb.com; phone: 1-800-378-3160;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Russell Hanser, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A321, Washington, D.C. 20554; e-mail: russell.hanser@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: julie.veach@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: chris.killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 1-800-378-3160, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, or Russell Hanser at (202) 418-0832.

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